FOR MYSORE STATE

Rural Welfare (1953) Department.

FOR MYSORE STATE

Rural Welfare (1953) Department.

SERIES.

G.O. NO. 1029

Dated 11-8-53

closed

Subject

[Despatch Abstract.]

H.R. & C.E – Act 1951 – O.P. No. 46/50 District Court – South Kanara – Sri Venkataramana Temple – Mulky village – Mangalore Taluk – South Kanara

C.F. 32—14'67,856 -21-3-62.

H.R. & C.E. (Adm) Department | Received _____ Registered _____

From (Name) Sri C. Narasimham, I.A.S. | To

Designation Commissioner,

Station MADRAS--17

The Secretary to Government,
Rural Welfare Department,
Fort St. George,
Madras--9.

Enclosures: Letter No. 48294/52-9 LGL (D 4) dated 20th July 1953.

Sir,

54249 g/c

Sub: Hindu Religious & Charitable Endowments - South Kanara District - Mangalore Taluk - Mulky Village Sri Venkataramana Temple - O.P.No.46/50 District Court - South Kanara - Costs - payment - sanction requested

- - - - -

O.P. No.46/50 on the file of the District Court, South Kanara was instituted by the Board and continued by this Department, for the modification of the scheme, settled by the Sub-Court South Kanara, in O.S. No.26/1915 on its file for the administration of Sri Venkataramana temple, Mulky, Mangalore Taluk, South Kanara District consistent with the provisions of Madras Act II of 1927 and the rules and bylaws framed thereunder. But the O.P. was dismissed by the Court on 1-4-1953 and this Department has been ordered to pay Rs.164-4-0 to respondents 3, 5, and 7 to 9 opposing the Petition.

pp. 3-13 wide.

Copies of the Judgment and Decree in the petition are sent herewith.

The Government Pleader, Madras who was consulted as to whether an appeal may be filed against the judgment of the District Court, has advised that in the light of the finding, it would be difficult to get the decision of the District Court up-set and that he does not think that an appeal will have any reasonable chance of success. I have accepted his opinion and decided not to file an appeal.

P.T.O.

In their U.O. Note No.79669 Courts.III/52-2 dated 25-6-1952, Government (in the Home Department) have directe that the costs awarded against the Government should be sanctioned by Government and paid to the party through the Collector of the District concerned, if the party resides in the mufassal. -

In the circumstances stated above, I request that Government may be pleased to accord sanction the payment of costs awarded to be paid to certain respondents in O.P. No.46/50 District Court, South Kanara.

COMMISSIONER.

Encl:2.

Copies of Judgement and decree in O.P. No.46/50 District Court - South Kanara.

CGn 23-7.

23.7.53

N THE COURT OF THE DISTRICT JUDGE OF SOUTH KANARA.

Present: Sri P. T. Raman Nayar, I.C.S.,
District Judge,

Wednesday, the 1st day of April, 1953.

Original Petition No.46 of 1950.

Between:-

The Commissioner, Hindu Religious and Charitable Endowments, Madras.

The Petitioner is the Commissioner, Hindu Religious and Charitable Endowments, Madras-6. PETITIONER.

And

Sri Venkatramana Temple, Mulky represented by its trustees.

1. U. Lakshmana Shenoy (since dead), son of U. Srinivasa Shenoy.
2. T. Ramakrishna Shenoy, son of T. Janardhana Shenoy Panchamahal, Mulki.
3. U. Krishna Rao, son of U. Venkatramana Shenoy, Kotekeri, Mulki.
4. Mukunda Kudva, son of M. Gopal Kudva, Kotekeri, Mulki,
5. U. Deva Rao, son of U. Hari Shanbhogue, Kotekeri, Mulki.
6. U. Krishnaraya Shenoy, son of U. Vittappa Shenoy, Panchamahal, Mulki.
7. U. Srinivasa Shanbhogue, son of U. Ramachandra Shanbhogue, Hospet, Mulki.
8. U. Krishna Shenoy (Hereditary Trustee), son of U. Srinivasa Shanbhogue, residing in Bappanad village of Mulki town of Mangalore.
9. U. Narayana Shenoy, son of U. Purushothama Shenoi residing in Bappanad village of Mulki Town.

RESPONDENTS.

Petition dated 8-6-1950 under section 57(9) of the Hindu Religious Endowments Act praying that the petition may be ordered and the scheme settled in O.S. No.26 of 1915 on the file of the Subordinate Judge of South Kanara, Mangalore, for the respondent temple ~~xx~~ may be modified by substituting the draft scheme suggested in Schedule B to the petition and that the costs of this petition may be ordered to be paid to the petitioner.

~~X X X~~ D E C R E E:- This petition coming on for final hearing on the 18th day of March 1953: Upon perusing the petition, the counter and additional counter statement filed by respondents 3, 5 and 7 to 9 and other material papers in the case and upon hearing the arguments of Sri K.S. Hegde, advocate for the petitioner, Sri K. Sadashiva Rao advocate, and Sri M.A. Kamath, pleader for respondents 3,5 and 7 to 9, the 1st respondent having died during the pendency of the petition, and the other respondents being absent, and having stood over for consideration till this day, this Court doth hereby order and decree as follows:-

1. That this petition be, and the same hereby is dismissed; and

2. That the petitioner do pay respondents 3, 5 and 7 to 9 Rs.164-4-0 for their costs in opposing this petition.

SCHEDULE OF COSTS.

	Petitioner			Respondents		
	Rs.	A.	P.	Rs.	A.	P.
Stamp for petition	25	0	0	-	-	-
Do for power	1	0	0	1	0	0
Do for applications	3	12	0	8	4	0
Do for Exhibits,	0	12	0	5	0	0
Service of process	15	10	0	-	-	-
Process writing fee	1	3	0	-	-	-
Commissioner's fee	-	-	-	-	-	-
Pleader's fee	150	-	-	150	-	-
Allowances to witnesses.	0	14	0	-	-	-
Total	198	3	0	164	4	0

Given under my hand and the Seal of the Court, this, the 1st day of April, 1953.

(Sd.) P.T. Raman Nayar,
District Judge.

/ True Copy /

Sd.
Superintendent,
Exd. by:

/ True Copy /

CGH/23-7.

IN THE COURT OF THE DISTRICT JUDGE OF SOUTH KANARA.

Present:- Sri P.T. Raman Nayar, I.C.S.,
District Judge.

Wednesday, the 1st day of April, 1953

Original Petition No. 46 of 1950.

Between:-

The Commissioner, Hindu Religious and Charitable Endowments, Madras. ... Petitioner.

and

Sri Venkataramana Temple, Mulky, represented by its trustees. ... Respondents.

1. U. Lakshmana Shenoy (since dead)
2. T. Ramakrishna Shenoy.
3. U. Krishna Rao.
4. Mukunda Kudva.
5. U. Deva Rao.
6. U. Krishnaraya Shenoy.
7. U. Srinivasa Shanbhogue.
8. U. Krishna Shenoy.
9. U. Narayana Shenoy.

Petition dated 8-6-1950 under section 57(9) of the Hindu Religious Endowments Act praying that the petition may be ordered and the scheme settled in O.S. No.26 of 1915 on the file of the Subordinate Judge of South Kanara, Mangalore, for the respondent temple may be modified by substituting the draft scheme suggested in Schedule B to the petition and that the costs of this petition may be ordered to be paid to the petitioner.

This petition coming on for final hearing on the 18th day of March, 1953 in the presence of Sri K. Sadahanda Hedge, advocate for the petitioners, Sri K. Sadashiva Rao, Advocate and Sri M.A. Kamath, Pleader for respondents 3, 5 and 7 to 9, the 1st respondent having died during the pendency of the petition, and the other respondents being absent, and having stood over for consideration till this day, the court passed the following

O R D E R.

This is an application brought by the Hindu Religious Endowments Board, under section 57(9) of Madras Act II of 1927 for a modification of the Scheme settled by the Subordinate Court of South Kanara in O.S. No.26 of 1915 for the administration of the temple known as the Mulky Sri Venkataramana Temple. The present trustees of the temple are the respondents to the application. (The passing of Act XIX of 1951 has made no difference to this case excepting that the Commissioner, Hindu Religious and Charitable Endowments, now figures as the petitioner in place of the Board)

2. Exhibit B-3 is a copy of the scheme decree. The scheme begins by declaring that the Sri Venkataramana Temple of Mulky belongs to the members of the Gowd Saraswath Brahmin community residing in the villages of Bappanad, Karnad and Manampadi (compendiously

known as Mulky Petah) in whom it vests the general control and management of the affirs of the temple, both secular and religious. The actual management is to be conducted by a council of seven Moktessors through a parapathyagar (Manager) appointed by them. The moktessors as well as the manager have to be members of the Gowd Saraswath community of Mulky Petah. Two of the moktessors are hereditary; the remaining five are to be elected by the community in accordance with certain rules.

3. The principal modification sought is the abolition of the monopoly in favour of the community. The temple, it is alleged, belongs to the Hindus as a whole. It attracts devotees from all communities and from all over the district and even beyond. Votive offerings are received from all Hindus and it is what might be called a general Hindu temple and not a sectional temple belonging to the Gowd Saraswaths of Mulky Petah. That being so, it is wrong in principle that its management should vest exclusively in a particular sect resident in a particular locality instead of in the Hindu public as a whole subject to the statutory supervision of the Board, now the Commissioner. The scheme is not conducive to the welfare of the institution, since by narrowing the field of selection and prescribing a particular mode, it prevents the best men from being appointed as moktessors and as manager. The management should be vested in a council of not more than three trustees all to be appointed by the Board; and the day to day administration should be carried out by a paid executive officer, also appointed by the Board and responsible to it.

4. Various other modifications are suggested. In fact, what is sought is not a mere modification of the scheme but a substitution thereof by the daraft scheme filed along with the petition. But, as I have said, the principal ~~modification~~ modification is that set out in the preceding paragraph; and it is over that that the controversy rages. The remaing changes suggested are either consequential to this modification or are matters of mere detail.

5. The respondents oppose the application on the ground that the scheme has worked very well and that there has been no mismanagement or other cause justifying a revision. The temple is a sectional temple belonging to the Gowd Saraswaths of Mulky Petah; and the modifications ought offend Article 26 of the Constitution in that they seek to interfere with the right of management vouchsafed to the community by that article. The provisions of the Act in so far as it sanctions such interference, in particular sections 18, 57 and 73 (the references are to the old act), are void under Article 13 of the Constitution. By an additional pleading the respondents by reason of the High Court's order in Writ Petition No.668 of 1951.

6. The folowing are the points for determination:

1. Is the temple a sectional temple of the Gowd Saraswath Community of Mulky Petah?

2. Does the scheme require modification and if so in what respects?

3. Do ahy of the modifications suggested offend against Article 25 or Article 26 of the Constitution?

4. To what reliefs?

Additional point.

5. Is the application not sustainable by reason of

the High Court's order in Writ Petition 668 of 1951?

7. Points 2, 3 and 5. These points may be considered together. Although in the petition vague allegations of mismanagement or, at any rate, of irregularities were made, no attempt was made to substantiate these allegations and it must be taken that the administration of the temple, under the scheme, has been satisfactory. The scheme has not been found wanting in its actual working; and the petitioner has been unable to demostrate that the scheme or any provision thereof is defective in the sense that it has jeopardised the welfare of the institution The only question to consider is whether a scheme, which has worke well in practice, should be jettisoned and an entirely new scheme, effecting the most drastic changes, substituted in its place, on grounds which are at best academic and which the respondents would characterise as doctrinaire, namely, that the administration of a public temple should not be vested in the hands of a particular community. If it is proved that a temple is a general and not a sectional temple, in other words that it belongs to the Hindu public as a whole, there might be some force in the argument that there sh ould be no monopoly in respect of its management in favour of any particular sect. But, in this case, I think it unnecessary to go into that question; for, it seems to me clear that the order of the High Court in Writ P Petition No.668 of 1951 upholds the right of the Gowd Saraswaths of Mulky Petah to be in exclusive management of this particular temple. The Writ petition was by the trustees of the temple against the State of Madras and the Commissioner for Hindu Religious and Charitable Endowments, and, apart from the order therein being a judicial precendent, it is directly binding on the parties to the present petition. That order, in express terms, recognises and upholds the sole and exclusive right of the Gowd Saraswath community of Mulky Petah to administer the temple; and it declares certain provisions of the new Act (and the correspondin provisions of the old) which authorise interference with this right as ultra vires the State Legislature in that they offend against Article 26 of the Constitution. The order also restrains the State Government from enforcing any of the impugned provisions the State Government form. It is clear, therefore, that any interference with the management of the temple by the Gowd Saraswath of Mulky Petah would be against Article 26 of the Constitution; but this is precisely what the petition seeks to do. For, the effect of modifying the scheme in the way suggested by the petitioner would be to take away completely the right to administer the temple from the community and vest it in trustees and an executive officer appointed by, and responsible to, the Commissione The community would no longer have any voice in the management of the temple; this would virtually vest in the Commissioner. No mismanggement of any kind having been proved, such a deprivation of the community's right of administration would, to say the least be unjustified. It is true that section 62(3) of the new Act (corresponding to section 57(9) of the Old) is not among the provisions which have been delcared to be void and which the petitioner has been restrained from enforcing. The order in the Writ Petition, therefore, might not directly prohibit the petitioner from proceeding his present application; but he can hardly expect the Court to accord him sanction to interfere with the right of management which, the High Court has delcared vests exclusively in the community in question, and which, it has further declared, is protected by Article 26 of the Constitution.

8. I hold these points in favour of the respondents,

9. Point 1 As I have already said, it is unnecessary to go into this question. Moreover the evidence placed before me is not of such a nature as to enable me to arrive at a satisfactory finding on the point. I might, however, say that in the Writ petition the High Court proceeded on the assumption that the decree in the scheme suit was conclusive on the question and

that the temple and its properties belonged to the Gowd Saraswath community of Mulky Petah.

10. Point 4. I dismiss the petition with costs. Vakil's fee Rs.150/-

Dictated to the shorthand writer, transcribed by him and pronounced in open Court, this, the 1st day of April, 1953.

(Sd.) P.T. Raman Nayar,
District Judge.

PETITIONERS' EXHIBITS.

A-1	31-1-1951	Certified copy of judgment in O.S. No. 24 of 1949 and 50 of 1950 on the file of the Subordinate Judge of South Kanara.

RESPONDENTS' EXHIBITS.

B-1	13-12-1951. 11-8-1952	Certified copy of order in Writ Petition No.668 of 1951 on the file of the High Court of Judicature, Madras.
B-2	9-3-19	Certified copy of order in C.M.P. No. 6995 of 1952 in Writ Petition No.668 of 1951 on the file of the High Court of Judicature, Madras.
B-3	9-3-1921	Certified copy of the scheme decree in O.S. No.26 of 1915 on the file of the Subordinate Judge of South Kanara.
B-4.	--	Certified extract from the account book of Sri Venkataramana Temple, Mulky.
B-5	28-11-1947	Certified copy of award (Panchayat Faisal)
B-6	18-1-1892	Certified copy of decree in O.S. No.36 of 1890 on the file of the Subordinate Judge of South Kanara.
B-7	Do	Certified copy of judgment in O.S.No.36 of 1890 on the file of the Subordinate Judge of South Kanara.
B-8	3-4-1902	Certified copy of award decree in O.S. No. 15 of 1902 on the file of the Subordinate Judge of South Kanara.
B-9	--	Certified copy of letter written by the President, Hindu Religious Endowment Board, Madras to the trustees of Sri Venkataramana Temple Mulky.
B.10.	20-7-1942	Copy of order No.90-A of the Board of Commissioners for H.R. Endowments, Madras, in O.A. No.397 of 1941.
B-11.	24-11-1941	Copy of notice issued by the Hindu Religious Endowments Board, Madras in O.A. 397 of 1941 to the trustees of Sri Venkataramana temple, Mulky.
B-12.	6-11-1941	Office copy of reply sent by the trustees of Sri Venkataramana temple, Mulky, to the president, Hindu Religious Endowments, Board, Madras.

P.

B-13.	11-7-1895	Certified copy of judgment in A.S. No.96 of 1892 on the file of the High Court of Judicature, Madras.
B-14	6-11-1951	Certified copy of Writ Petition No.668 of 1951 on the file of the High Court of Judicature, Madras.
B-15	[illegible]	Certified copy of affidavit of Sri U. Krishna Rao (a trustee) filed along with the original of Exhibit B-14.
B-16.	13-12-1951	Certified copy of the Writ of certiorari order absolute in W.P. 668 of 1951. on the file of the High Court of Judicature, Madras.

WITNESSES EXAMINED.

For Petitioner	For respondents.
1: B. Krishna Bhat (Inspector, Mangalore Division, under the petitioner).	None

Sd. P.T. Raman Nayar,
District Judge.

True Copy

Sd. Superintendent.
Exd. By

True Copy /

CGN/23-7.

Rural Welfare V.

H.R and C.E Act 1951 - O.P.No. 46/50. District Court - South Kanara - Sri Venkataramana Temple - Mulky Village - Mangalore Tk. South Kanara dist. - payment of Costs to the respondents sanctioned.

—

Read the following:- From the Comm. H.R and C.E (Adm) dept No. 48244/52-9 Hal.(D.4) dated 20-7-53

—

Order No. 1029 R.W. dated. 11-8-53

Sanction is accorded to the payment of a sum of Rs. 164-4-0. (Rupees one hundred and sixty four and annas four only) towards the Costs awarded by the District Court, South Kanara in O.P.No 46/50. to Sri U. Krishna Rao, Kotebari, Mulki (~~Respondent 3~~), Sri U. Deva Rao, Kotebari, Mulki (~~Respondent 5~~), Sri U. Srinivasa Shanbhogue Hosper, Mulki (~~Respondent 9~~), Sri U. Krishna Shenoy (Hereditary trustee), Bappanad Village of Mulki Tk, ~~Mangalore~~ (~~Respondent 8~~) and Sri U. Narayana Shenoy, of Bappanad Village of Mulki Tk, ~~Mangalore~~ (~~Respondent 9~~). Respondents ~~in O.P No 46/50. through their advocate Sri~~ M.A. Kamath, respondents 3, 5, & 7 to 9 respectively in the said O.P.

2. The expenditure should be debited to '47 Misc. Deptt - J misc - 6. Administration of Hindu Religious and charitable Endowments Act 1951 - Other Charges - Law charges'. (- Charged -)

3. The Collector of South Kanara is requested to draw and disburse the amount sanctioned in para 1 above direct to the respondents concerned.

29/7/53
29.7.53

307B
31-7-53

To the Collector of South Kanara.
The Comm. H.R and C.E (Adm) dept.
The A.G. through F.in.
" Acc. & Exam.
Copy to Hum. Dept.

EB

Note: For Finance and Home may see for acceptance

24/7/53.

24.7.53

30/7/53.

30.7.53

ADDITIONAL DEPUTY SECRETARY TO GOVERNMENT
1 CAUG 53
RURAL WELFARE DEPARTMENT

Home | Fin

(Home (Cch. III) Sept.) No 54249 RWV/53-1
31.7.53

The draft order overleaf may be accepted and the case passed on to Fin.

157911

ASSISTANT SECRETARY TO GOVERNMENT
31 JUL 53
HOME DEPARTMENT

PBB
1.8.53.

1/8/53

Fin.

Hme
Home 157911 Cch III/53-1
3.8.53.

(Fin (N (Exp B))

The draft order overleaf may be accepted as amended in pencil

1/8/53

7/8/53.

RW.

Rin sept

Hme

Lf
10/8/53

ADDITIONAL DEPUTY SECRETARY TO GOVERNMENT
FD
3-AUG 1953
63068
FINANCE DEPARTMENT

Fin
Fin UO 63068/EB/53-1
7.8.53

57767